

AD3
20.05.2024
Court. No. 19

CO 1479 of 2024

Ajay Kumar Sahoo
vs.
sanjoy Shaw and others

Mr. Debdipto Banerjee
Mr. Soumen Banerjee

... for the petitioner

Mr. Asit Baran Raut
Mr. Tuhin Subhra Raut
Mr. Asit Kr. Chowdhury
Ms. Ishita Raut

... for the opposite parties

The application arises out of an order dated April 8, 2024, passed by the Learned Additional District Judge, Fast Track, 1st Court, Sealdah, in Ejectment Appeal No. 08 of 2014,

By the order impugned, the learned Court held that the prayer for extension of time to deposit the occupational charges, which had not paid for a period of four months, could not be allowed. The stay of the execution, stood automatically vacated. The default clause had already come into operation and the Court did not have any power either to extend time to deposit the amount or to grant a further stay.

Learned Advocate for the petitioner submits that the Court, in exercise of inherent power could always grant opportunity to the petitioner to deposit the defaulted amount from December, 2023 to March,

2024 totalling to Rs. 14,000 with a further direction that the ejectment execution case No. 14 of 2013 would remain stayed.

It is submitted that the petitioner had genuine reasons for not depositing the amount. During the period in which default was committed, the son of the petitioner met with an accident and his daughter-in-law was in the family way. He had to go to his native village to attend to such emergency.

Learned Advocate for the decree holder/plaintiff submits that there were other judgment debtors too, who could have deposited the occupational charges. The court had become *functus officio* as the stay application was disposed of. The Code of Civil Procedure provided that enlargement of time could be sought for only under Section 148 thereof. When there was a specific provision under the Code, to seek enlargement of time to deposit any money as directed by the Court, inherent power of court could not be invoked in this case.

The opposite party relied on the decision of this court in the matter of **Gobordhan Roy vs Pannalal Sha** reported in **AIR 1994 Calcutta 154**.

Admittedly, the petitioner suffered a decree of eviction and preferred the appeal. As a condition for stay of the execution of the eviction decree, direction was passed by the learned appellate court to deposit

occupational charges of Rs. 3500 per month. The occupational charges were being paid regularly, but from December, 2023 to March 2024, the judgment debtors failed to deposit the same. The contention of the petitioner is that he was the one who was paying the occupational charges. He had to go to his native village to attend to some family crisis. The nature of crisis is serious. His son met with an accident and his daughter-in-law was on the family way.

Although the Code of Civil Procedure contains a provision under which the petitioner could have come and prayed for enlargement of time to deposit the occupational charges, instead of invoking the inherent power of the court, this is a hyper technical submission. Moreover, without going into the question of nomenclature, the application can easily be construed as one under the provision of the Code, where a tenant may seek further directions for deposit of the defaulted amount. It is also to be noted that apart from praying for an extension to deposit the defaulted amount, another prayer was made by the judgment debtor for extension of the order of stay by modifying the default clause. Such power of the Court to issue further directions in exercise of inherent power is provided under section 151 of the Code of Civil Procedure, which can always be invoked by a Court to do substantial justice. This is not a case

where the default had been committed for a substantial period, intentionally and with mala fide motive. The tenant approached the court at a belated stage when he was at the verge of eviction.

The default was committed between December 2023 and March 2024. The application was filed on April 3, 2024.

The decision in **Gobardhan (supra)** does not apply to this case. The same is distinguishable on facts and does not apply to a situation where a tenant approaches the Court with a prayer to deposit the occupational charges within a month following the default.

Under such circumstances this court is of the view that the learned appellate court should have invoked the inherent power and allowed deposit of the defaulted amount, for the ends of justice upon noting the bona fide of the petitioner.

Under such circumstances this Court directs that the petitioner shall deposit the rent from December 2023 to May 2024 as the rate directed by the learned Court at one time, within 7th June 2024. Cost of Rs. 2000/- shall be paid to the landlord within 7th June 2024. Thereafter, the occupational charges shall be paid month by month as directed by the learned Court. The learned Appellate Court is

requested to dispose of the appeal within a year from date. It appears that the suit is of 2004.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)